



SMALL BUSINESS ADMINISTRATION

Small Business Investment Companies – Early Stage SBICs

AGENCY: U.S. Small Business Administration

ACTION: Call for Early Stage Fund Managers

SUMMARY: This call for proposals (“Call”) invites experienced early stage fund managers to submit the preliminary materials discussed in Section II below, in the form of the Small Business Investment Company (“SBIC”) Management Assessment Questionnaire (“MAQ”), for consideration by the Small Business Administration (“SBA”) to be licensed as Early Stage Small Business Investment Companies. Licensed Early Stage SBICs may receive SBA-guaranteed debenture leverage of up to 100 percent of their Regulatory Capital, up to a maximum of \$50 million. However, Early Stage SBICs may request less than 100 percent of their Regulatory Capital. Importantly, Early Stage SBICs must invest at least 50% of their investment dollars in early stage small businesses. For the purposes of this initiative, an “early stage” business is one that has never achieved positive cash flow from operations in any fiscal year. By licensing and providing SBA guaranteed leverage to Early Stage SBICs, SBA seeks to expand entrepreneurs’ access to capital and encourage innovation as part of President Obama’s Start-Up America Initiative launched on January 31, 2011. More information on the Early Stage SBIC Initiative and the regulations governing these SBICs may be found at www.sba.gov/inv/earlystage.

DATES:

The following table provides the key milestones for the Early Stage SBIC Initiative.

Milestones	Dates/Times
Question and Answer Period Closed	5 p.m. Eastern Time (“EST”) on March 28, 2014
Initial Review Period	
Management Assessment Questionnaires (“MAQs”) Due	5 p.m. EST—March 28, 2014
Interview Period	May 26, 2014—June 5, 2014
Anticipated Green Light Decision	May 26, 2014—June 5, 2014
Licensing Periods	

For funds seeking a license in FY 2014	5 p.m. EST June 30, 2014
Anticipated Licensing Date for FY 2014 funds	No later than September 30, 2014
All other funds have 12 months from issuance of a Green Light to submit their license application	Applications considered as they are received
<i>Notes:</i>	
<ul style="list-style-type: none"> <i>SBA reserves the right to extend its interview, due diligence, committee, and approval timelines as appropriate. SBA will update its website at www.sba.gov/inv/earlystage should these dates change. Applicants will be notified by e-mail should these dates change.</i> <i>SBA expects to issue additional calls for Early Stage Fund Managers on an annual basis. SBA will announce these calls via a call notice in the Federal Register.</i> 	

ADDRESSES: Visit www.sba.gov/inv/MAQ to download a copy of the Management Assessment Questionnaire (the “MAQ”). You must submit via express or next day delivery service (i) the relevant MAQ signature pages and (ii) the completed MAQ on a CD-ROM in **Word** and **Excel** format to the following:

Scott Schaefer
Senior Investment Officer
Office of Investment and Innovation
U.S. Small Business Administration
409 3rd St., SW, Suite #6300
Washington, D.C. 20416

SBA will not accept MAQs in .pdf format or MAQs delivered via regular mail (due to irradiation requirements), or hand delivery or courier service.

SUPPLEMENTARY INFORMATION:

I. Background Information

SBA invites early stage fund managers to submit the preliminary materials, as discussed in Section II below, in the form of a Management Assessment Questionnaire (“MAQ”) for the formation and management of an Early Stage SBIC. In 2012, SBA introduced the Early Stage Initiative. Early Stage SBICs represent a new sub-category of SBICs that will focus on making investments in early stage small businesses. Go to www.sba.gov/inv/earlystage for information on the Early Stage Initiative and links to the Early Stage SBIC Final Rule (“Final Rule”). This

initiative is part of President Obama's "Start-Up America Initiative" to promote American innovation and job creation by encouraging private sector investment in job-creating startups and small firms, accelerating research, and addressing barriers to success for entrepreneurs and small businesses.

II. Management Assessment Questionnaire/License Application Materials

The first required submission in the Early Stage Licensing process is SBA's MAQ. The MAQ consists of two forms that cover qualitative and quantitative information on the management team, the proposed strategy for the SBIC, the principals' investment track record, and the proposed fund structure and economics. The MAQ consists of SBA Form 2181 and Exhibits A-F of Form 2182.

Should SBA issue you a "Green Light letter," you must submit the SBIC License Application, consisting of SBA Form 2181, 2182 and 2183 (updated to reflect any changes), for the final licensing phase. Exhibit O in SBA Form 2183 includes the fund's limited partnership agreement ("LPA"). Applicants should review this notice for special instructions associated with the LPA for Early Stage SBICs.

III. Early Stage Licensing Process

There are four stages in SBA's Early Stage Licensing Process: A) Call Period; B) Initial Review; C) Applicant Fundraising and Document Preparation; and D) Licensing. Each of these stages is discussed below.

- A. Call Period. This notice signals the start of the Fiscal Year 2014 Early Stage SBIC call period. SBA intends to hold one Early Stage SBIC call period for accepting MAQs per fiscal year and SBA will issue a new notice in the Federal Register for the next call period. Interested parties should download a MAQ from www.sba.gov/inv/MAQ. You should also review the information at www.sba.gov/inv/earlystage which includes a list of frequently asked questions ("FAQs") regarding the Early Stage Initiative. If you still have questions regarding the Early Stage process, please e-mail your questions to

erikka.robinson@sba.gov. SBA will endeavor to respond to your question within three business days, depending on volume. SBA may not be able to respond to fund-specific questions or questions that require a legal opinion. SBA will not take any further questions after the end of the Question and Answer Period identified under the Dates section.

B. Initial Review. At the end of the Initial Review phase, SBA will issue a Green Light letter to those applicants that have preliminarily met the evaluation criteria for an Early Stage SBIC, including the vintage year and geographic diversification criteria. The process for SBA's Initial Review is as follows:

1. **Submit MAQ.** SBA must receive your completed MAQ no later than the date and time specified under the Dates section of this notice. SBA will send a confirmation that it has received your MAQ within three business days of your submission. If you have not fully completed all sections of the MAQ or provided sufficient information to allow SBA to evaluate your management team, you may be ineligible for this call period. If so, SBA will notify you by e-mail.
2. **Due Diligence.** SBA will review all MAQs against the evaluation criteria identified in this notice. SBA may engage a contractor to assist in evaluating MAQs received in response to this Call. The Investment Committee (composed of senior managers from the Office of Investment and Innovation) will consider each MAQ, and if the Investment Committee concludes that the management team may be qualified for an Early Stage SBIC license, the entire team will be invited to SBA Headquarters at 409 Third Street, SW, Washington, D.C. for an interview. Those applicants not invited for interviews will be notified. After September 30, 2014, SBA will provide feedback upon request to applicants not selected for an interview.
3. **Interview Period.** SBA's invitation for an interview will identify a 1-hour time block during the Interview Period identified in the Dates Section, along with the topics that

the applicant should be prepared to address. SBA will conduct interviews at SBA Headquarters.

Applicants seeking to be licensed by the end of the fiscal year—i.e., September 30, 2014—must bring the following completed exhibits from SBA Form 2182 to the Interview:

- a. Exhibit G - Fingerprint cards and
- b. Exhibit I - Statements of Personal History.

If the applicant receives a Green Light letter, SBA will forward the fingerprint cards and Statements of Personal History to SBA's Office of Inspector General for processing by the FBI.

4. Green Light Letter. Following the interview, the SBA will issue a Green Light letter to all applicants that have met the criteria identified in this notice, as determined by the Investment Committee. Applicants approved by the Investment Committee can expect to receive the Green Light letter via e-mail within a few days of the Investment Committee's decision. The Green Light letter formally invites an applicant to submit its application for an SBIC License. The Green Light letter is only an invitation to proceed to the next stage in the process, not a guarantee that a fund will be issued an Early Stage SBIC license. Those applicants that do not receive a Green Light letter will also be notified by e-mail within a few days of the Investment Committee's decision. After September 30, 2014, SBA will provide feedback upon request to those applicants that do not receive a Green Light letter.

- C. Fundraising and Document Preparation. If you receive a Green Light letter, you will need to raise the minimum Regulatory Capital needed to execute your strategy (which can be no less than \$20 million) and submit your completed license application within one year from the date of the letter.

1. **Raise Regulatory Capital.** An Early Stage SBIC applicant must have signed capital commitments for at least \$20 million in Regulatory Capital prior to filing its license application.
2. **SBIC Education.** All principals of the Early Stage SBIC applicant must attend a one-day SBIC Regulations training class. This training is held at least three times per year in Washington, D.C. The purpose of this class is to familiarize principals with the SBIC rules, regulations and compliance procedures.

Although an applicant may receive a license before all principals have completed the training, a majority of principals must do so before licensing and all must do so before a licensed Early Stage SBIC will be permitted to draw leverage.

Information concerning registration for classes can be obtained at www.sbia.org.

Certain non-principals such as members of a board of directors may also be required to take the class. In addition, any employees or consultants whom you have assigned to handle regulatory matters or to interact with the Office of Investment and Innovation should attend the class.
3. **Finalize Documents & Perform Checklist.** The following items must be completed and submitted in order to proceed to the Licensing phase:

Item	<input checked="" type="checkbox"/>
Updated SBA Form 2181	<input type="checkbox"/>
SBA Form 2182 & 2183	<input type="checkbox"/>
At least \$20 million in Regulatory Capital evidenced by signed Capital Certificate in Form 2183 (Exhibit K)	<input type="checkbox"/>
\$25,000 Non-refundable licensing fee	<input type="checkbox"/>

D. **Licensing.** During this last stage, SBA will review your completed application, perform further due diligence and analysis as needed, and make the final licensing decision.

Applicants that receive Green Light letters in 2014, and wish to be licensed in FY 2014,

will need to submit their completed license application no later than 5 p.m. EST on June 30, 2014, and follow all guidance identified in this notice. Applicants that do not comply with the requirements in this notice risk not receiving a license in FY 2014. All other applicants must apply within one year of the issuance of their Green Light letter. The process for Licensing is detailed below.

1. SBA acceptance of license application. Upon receipt of the application, SBA will acknowledge receipt by e-mail. Within three business days, SBA will determine whether the application is complete, meets the minimum capital requirements and satisfies management ownership diversity requirements. If so, SBA will send the applicant an acceptance letter. If not, SBA will ask the applicant to resolve the issues identified.
2. Background and Documentation Review. Once the application has been accepted, SBA will forward the fingerprint cards and Statements of Personal History to SBA's Office of Inspector General for processing by the FBI if the applicant did not previously submit such information during or after the interview. Following a review of the application and legal documents, SBA will provide the applicant with a "comment letter." Applicants must respond in writing to the comment letter. Applicants seeking to be licensed in Fiscal Year 2014 should make every effort to respond to SBA's comments within one week. Other applicants should respond as quickly as possible, but in any event within 30 days. Failure to address all comments to SBA's satisfaction will slow down the licensing process. Please note that pre-licensing investments, which SBA must review and approve before they are closed, will also add to the licensing time.
3. Divisional Licensing Committee. After SBA's licensing staff and Office of General Counsel have completed their review, the license application is presented

to the Divisional Licensing Committee. This committee is composed of the senior managers of the Office of Investment and Innovation. If approved by the Divisional Licensing Committee, the application is forwarded to the Agency Licensing Committee which is comprised of certain senior managers of the SBA. Prior to consideration by the Agency Licensing Committee, an applicant must provide a signed, up-to-date capital certificate showing that it has at least \$2.5 million in Leverageable Capital, consisting of cash on deposit, approved pre-licensing investments funded with partners' contributed capital, and/or approved organizational and operational expenses paid out of partners' contributed capital, and at least \$20 million in Regulatory Capital. The applicant's bank must certify that the requisite funds are in the applicant's account and unencumbered.

4. Agency Licensing Committee and Administrator Approval. If the Agency Licensing Committee recommends approval of your license application, it will be forwarded to the SBA Administrator or her designee for final action as soon as you submit fully executed copies of all legal documents. (Please note that the executed documents must be identical to the "final form" of the documents approved by SBA.) If the Administrator or her designee approves your application, your Early Stage SBIC license is issued.
5. Leverage Commitments. SBA has allocated \$200 million in Fiscal Year ("FY") 2014 for Early Stage SBICs. SBA expects to allocate another \$200 million in each of FYs 2015 and 2016. SBA expects to be able to commit the full amount of leverage that an Early Stage SBIC requests at the time of licensing. If total leverage commitments requested for the FY 2014 licensing cycle exceed the amount available in FY 2014, SBA will allocate available leverage across all FY2014 Early Stage SBICs on a pro rata basis. Early Stage SBICs licensed in FY2014 will be eligible to request the remainder of their uncommitted leverage

request in subsequent fiscal years based on availability. Early Stage SBICs that raise additional private capital after licensing may request leverage commitments against that capital. However, such requests are subject to leverage availability and will not be considered until all other licensee requests are satisfied.

IV. Early Stage SBIC LPA and Organizational Instructions

A. Early Stage SBIC Model LPA. In order to expedite the review of Early Stage SBIC license applications, SBA has adopted a Model Early Stage SBIC Limited Partnership Agreement (“Model LPA”). The Model LPA includes required provisions shown in Bold Arial type and optional provisions in a different font. You must download the Model LPA at <http://www.sba.gov/content/model-participating-security-sbic-l>. Applicants must use the Model LPA as a template and must follow the organizational structure of the Model LPA. Further, Applicants must include in their limited partnership agreements all of the required provisions of the Model LPA that appear in Bold Arial type. SBA will not accept additions, deletions and other changes or modifications to any of those required provisions. Applicants are required to submit a copy of their limited partnership agreement black-lined against the Model LPA, as explained in the instructions provided at the beginning of the Model LPA. SBA provides the following further guidance on limited partnership agreements:

1. SBA encourages applicants to adhere to the Model LPA to the maximum extent possible. Although SBA does not prohibit changes to those Model LPA provisions that do not appear in Bold Arial type, such changes must be explained in a narrative accompanying the applicant’s limited partnership agreement. The entire agreement is subject to SBA’s approval.
2. Conditions or restrictions on the ability of the general partner to call private capital commitments are limited to those permitted by the Model LPA..
3. Withdrawal rights are limited to those permitted by the Model LPA.

4. Applicants must adhere to SBA's management fee policies available at <http://www.sba.gov/sites/default/files/files/SBICTechnote07arev200804.pdf>.

This policy sets a *maximum* allowable management fee only. The actual management fee will be set by negotiation between the management team and the limited partners and may be less than the maximum. Early Stage SBIC applicants should be aware that the calculation of an SBIC's capital impairment percentage is affected by all fund expenses, including management fees. SBA will consider the management fee in its licensing evaluation criteria as part of fund economics. SBA believes that the primary incentive for fund managers should be carried interest rather than fees.

5. The designation of fund expenses and expenses to be paid out of the management fee must be consistent with SBIC program regulations (see 13 CFR §107.520).
 - a. Organizational costs, expenses incurred in applying for a license and forming the SBIC and its entity general partner (but not its parent fund or any other affiliate), are considered a partnership expense. Organizational expenses typically include items such as the licensing fee, cost of legal and other professional and consulting services, travel and other fundraising expenses, costs of preparing, printing and distributing the private placement memorandum or other offering materials, and other related expenses such as telephone and supply costs. SBA strongly encourages applicants to include in the LPA a reasonable cap on the total organizational costs to be paid by the applicant. Costs that SBA deems excessive can be paid by an affiliate of the applicant or deducted from the applicant's Regulatory Capital prior to licensing (Regulatory Capital must still be at least \$20 million after the deduction).

- b. Unreimbursed expenses on deals that do not close may be designated as a partnership expense but must be capped at a reasonable level.
- 6. Right of limited partners to remove general partner – Provisions allowing removal of the general partner without cause (“no-fault divorce” provisions) are permitted only after the Early Stage SBIC has repaid all outstanding leverage and any other amounts payable to SBA and has surrendered its SBIC license.
- 7. Any amendments to the limited partnership required by SBA must be executed before licensing. Any amendments initiated by the applicant during the licensing process must be submitted to SBA in draft form as early as possible. SBA will not consider amendments to an Early Stage SBIC’s LPA for a minimum of six months after licensing.

B. Organization. Early Stage SBIC applicants must adhere to the following rules regarding organizational structure:

- 1. Applicant cannot be a BDC or other public entity or a subsidiary of any such entity.
- 2. All provisions governing the operation of the SBIC must be included in the limited partnership agreement. A side letter between the applicant (or its general partner) and an investor may supplement the limited partnership agreement but may not supersede it. In the event of a conflict between the limited partnership agreement and the side letter, the limited partnership agreement shall control. If an investor requests a side letter provision that is of general interest to all investors (e.g., a provision regarding the fund’s efforts to invest in certain geographic areas), that provision should be incorporated into the limited partnership agreement. All side letters require SBA’s prior written approval.
- 3. Applicant must adopt SBA Model Valuation Guidelines.
- 4. Drop-down SBICs

- a. The drop-down structure should be used only when it has a clear business purpose:
 - i. Example 1 – Parent fund has already raised capital and begun operating and wants to commit a portion of its capital to an Early Stage SBIC.
 - ii. Example 2 – Substantial capital will be retained for investment at the parent level (SBA suggests that managers consider the alternative of structuring a non-SBIC fund side by side with the SBIC).
- b. Drop-down funds must have one parent fund only and the parent fund must be a U.S. entity.
- c. Parent must qualify as a traditional investment company based on established SBA precedent.
- d. Parent must disclose the identity of all of its investors.
- e. All of the investors in the parent fund (the SBIC’s “Class A” limited partner) must agree to be “Class B” limited partners of the SBIC with an obligation to fund the Early Stage SBIC capital calls if the Class A limited partner does not. The obligation of the Class B limited partners to the Early Stage SBIC is reduced dollar for dollar as the parent fund contributes capital to the SBIC. The Model LPA contains required provisions for drop-down funds.
- f. The Class B limited partners’ commitments to the SBIC applicant must be expressed as a specific dollar amount (not just as the “proportionate share” of parent fund’s commitment).
- g. The total dollar amount of Class B commitments must be equal to the Class A limited partner’s unfunded commitment to the SBIC. SBA will not require

Class B commitments if the SBIC's Regulatory Capital will not include any unfunded commitments from the Class A limited partner.

C. Capitalization. Applicants must raise the minimum \$20 million in Regulatory Capital by the time the license application is submitted.

1. Capital commitments from limited partners must be made directly to the SBIC (and its parent fund, in the case of a drop-down) with no intermediaries involved.
2. The Early Stage SBIC applicant must have the unconditional ability to legally enforce collection of each capital commitment.
3. Capital Certificate. Capital commitments must be documented in the capital certificate (Exhibit K of SBA Form 2183) and comply with the following:
 - a. A signed Capital Certificate must be submitted with the license application.
 - b. The only permitted condition on private capital commitments is:
 - i. Receipt of Early Stage SBIC license.
 - c. Individual investors must list primary residence address, not a business address.
 - d. Street addresses are required (no P.O. Box addresses).
4. A dual commitment may be obtained to back up the commitment of any direct investor in the SBIC who is not an Institutional Investor.
5. Capital commitments by the principals, general partner, or their affiliates must be payable in cash when called (cannot be satisfied with notes or management fee waivers).

D. General Partner

1. All principals must:
 - a. Hold direct ownership interests in and be the direct individual managers of the general partner, with no intervening entities.

- b. Receive carried interest directly from the general partner; for drop-down SBICs, carried interest may be received from the parent fund's general partner.
2. A maximum of 25% of the carried interest may be allocated to non-principals.
3. Any provision to remove or terminate a principal must be spelled out within the general partner's organizational document and must not be tied to events occurring under other agreements (e.g., a principal's employment agreement with the management company).

E. Investment Advisor ("Management Company"). Ownership of the Management

Company that is highly disproportionate to the ownership of the general partner (e.g., one principal is the 100% owner) is not viewed favorably by SBA, but may be acceptable if there are adequate checks and balances on the powers of the dominant owner. Areas that cannot be subject to unilateral decision-making include the following:

1. Power to remove or terminate other principals.
2. Power to change the composition of the Early Stage SBIC's investment committee.

V. Early Stage SBIC Licensing Evaluation Criteria.

- A. General Criteria. SBA will evaluate an Early Stage SBIC license applicant based on the submitted application materials, Investment Committee interviews with the applicant's management team, and the results of background investigations, public record searches, and other due diligence conducted by SBA and other Federal agencies. SBA will evaluate an Early Stage SBIC license applicant based on the same factors applicable to other license applicants, as set forth in 13 CFR §107.305, with particular emphasis on managers' skills and experience in evaluating and investing in early stage companies. As discussed in the Final Rule, evaluation criteria fall into four areas: A) Management Team; B) Track Record; C) Proposed Investment Strategy; and D) Organizational

Structure and Fund Economics. You should review these regulations prior to completing your MAQ.

- B. Managing SBA Leverage. SBA will pay particular attention to how a team's investment strategy works with proposed SBA leverage. Early Stage Debenture leverage either requires a 5 year interest and annual charge reserve from the date of issue or is structured with an original issue discount that covers the interest and annual charges for the first 5 years. In either case, Early Stage SBICs must identify how quarterly interest payments beginning in the 6th year from Debenture issue will be met. Sources of liquidity to make interest payments may include a) private capital; b) realizations; or c) current income. As part of your plan of operations, you should carefully consider how your investment strategy will work with SBA leverage and make appropriate suggestions to manage risk. Risk mitigation strategies might include making some investments in current pay instruments, taking down less than a full tier of leverage (i.e., leverage less than 100% of Regulatory Capital), taking leverage down later in the fund's life, lowering management expenses, and reserving more private capital. The strategies you choose to employ should be appropriate for your management team's track record and investment strategy.
- C. SBA Diversification Rights. Per 13 CFR §107.320, SBA reserves the right to maintain diversification among Early Stage SBICs with respect to (i) the year in which they commence operations ("vintage year") and (ii) geographic location.
1. Vintage Year Diversification. Vintage year has a major impact on the return expectations of a fund and excessive concentration in a single year could substantially increase program risk. Therefore, SBA reserves the right, when licensing Early Stage SBICs, to maintain diversification across vintage years. SBA believes that it will be able to manage vintage year diversification through its call process. If SBA receives an extraordinary number of qualified applicants in FY 2014, it may not approve all such applicants.

2. Geographic Diversification. All Early Stage SBICs must first meet SBA's basic licensing criteria. After those criteria are met, SBA reserves the right to maintain diversification among Early Stage SBICs with respect to the geographic location in which the Early Stage SBIC expects to invest.

Javier Saade,
Associate Administrator
Office of Investment and Innovation

[FR Doc. 2014-02225 Filed 02/03/2014 at 8:45 am; Publication Date: 02/04/2014]